



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2019-0577; FRL-10006-77-Region 3]

Air Plan Approval; West Virginia; Redesignation and Maintenance Plan for the West Virginia Portion of the Steubenville Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to redesignate the West Virginia portion of the Steubenville, Ohio-West Virginia multi-state sulfur dioxide (SO₂) nonattainment area (referred to as the “Steubenville Nonattainment Area” or the “Area”) from nonattainment to attainment. EPA is also proposing to approve West Virginia’s maintenance plan for its portion of the Steubenville Nonattainment Area. Emissions of SO₂ in the Area have been reduced and ambient SO₂ readings in the nonattainment area are currently well below the 2010 1-hour SO₂ national ambient air quality standard (NAAQS).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0577 at <https://www.regulations.gov> or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2043. Ms. Calcinore can also be reached via electronic mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background and redesignation requirements
- II. Relationship between this rulemaking and the attainment plan rulemaking
- III. Determination of attainment
- IV. CAA section 110 and part D requirements and fully approved SIP under CAA section 110(k)
- V. Permanent and enforceable emission reductions
- VI. Maintenance plan

VII. Proposed Action

VIII. Statutory and Executive Order Reviews

I. Background and redesignation requirements

In 2010, EPA established a revised primary hourly annual SO₂ NAAQS of 75 parts per billion (ppb). 75 FR 35520, June 22, 2010; 40 CFR 50.17. EPA designated the Steubenville, Ohio-West Virginia area as nonattainment for the 2010 SO₂ NAAQS on August 5, 2013, based upon air quality monitoring data for calendar years 2009–2011. 78 FR 47191; 40 CFR 81.349, 81.336. The Steubenville Nonattainment Area is comprised of a portion of Jefferson County, Ohio and a portion of Brooke County, West Virginia. The Ohio portion of the nonattainment area includes Cross Creek Township, Steubenville Township, Warren Township, Wells Township, and Steubenville City in Jefferson County. 40 CFR 81.336. The West Virginia portion of the nonattainment area is the Cross Creek Tax District in Brooke County. 40 CFR 81.349. Ohio and West Virginia were required to prepare State Implementation Plan (SIP) revisions that provided for attainment of the SO₂ NAAQS in the Steubenville Nonattainment Area by the SO₂ attainment date of October 4, 2018. These “attainment plans” or “attainment demonstrations” were also required to meet the requirements of sections 172(c) and 191–192 of the CAA. West Virginia’s attainment plan SIP revision was submitted to EPA through the West Virginia Department of Environmental Protection (WVDEP) on April 25, 2016, with a supplemental submission from WVDEP on November 27, 2017 and a clarification letter on May 1, 2019. Ohio’s attainment plan SIP revision was submitted to EPA through the Ohio Environmental Protection Agency (OEPA) on April 1, 2015 with supplemental submissions on October 13, 2015, March 25, 2019, and June 25, 2019. EPA proposed to approve the attainment plans submitted by Ohio and West Virginia on June 24, 2019. 84 FR 29456. On October 22, 2019,

EPA approved the attainment plans for the Steubenville Nonattainment Area. 84 FR 56385.

EPA's October 22, 2019 approval also revised the West Virginia SIP to include new emissions limits, operational restrictions, and associated compliance requirements for Mountain State Carbon (MSC) and revised the Ohio SIP to include limits on emissions from Mingo Junction Energy Center (also known as "R.G. Steel-Wheeling Mingo Junction"), the JSW Steel USA Ohio facility (JSW Steel), and the American Electric Power (AEP) Cardinal Power Plant (referred to as "Cardinal Power Plant").

On June 25, 2019, Ohio submitted a request to redesignate the Ohio portion of the Steubenville Nonattainment Area. EPA redesignated the Ohio portion of the Steubenville Nonattainment Area to attainment on November 29, 2019. 84 FR 65683. On August 22, 2019, West Virginia submitted a request to redesignate the West Virginia portion of the Steubenville Nonattainment Area.

Under CAA section 107(d)(3)(E), five criteria must be met before a nonattainment area may be redesignated to attainment. Although the Steubenville Nonattainment Area includes portions within two states, this action only proposes to redesignate the West Virginia portion of this area. As stated previously, the Ohio portion of the Steubenville Nonattainment Area was redesignated to attainment on November 29, 2019.

The five criteria in CAA section 107(d)(3)(E) that must be met, and EPA's interpretation of whether any of the criteria must be met in both the Ohio portion and West Virginia portion of the Steubenville Nonattainment Area or only in West Virginia, are discussed below. These criteria are:

1. EPA has determined that the area has attained the relevant NAAQS. Section 107(d)(3)(E)(i).

In this rulemaking, EPA is evaluating whether the entire two-state Area is attaining the SO₂

NAAQS.

2. The applicable implementation plan has been fully approved by EPA under section 110(k) of the CAA. Section 107(d)(3)(E)(ii). In this rulemaking, EPA is evaluating redesignation for only the West Virginia portion of the Area on the basis of whether West Virginia's applicable implementation plan has been fully approved.
3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the applicable implementation plans, Federal regulations, and other permanent and enforceable reductions. Section 107(d)(3)(E)(iii). In this rulemaking, EPA is evaluating this criterion for both the Ohio and West Virginia portions of the Steubenville Nonattainment Area.
4. EPA has fully approved a maintenance plan, including a contingency plan, for the area that meets the requirements of section 175A of the CAA. Section 107(d)(3)(E)(iv). In this rulemaking, EPA is evaluating only whether West Virginia's maintenance plan provides for its share of actions to assure maintenance in the two-state Area.
5. EPA has determined that the state has met all applicable requirements for the area under section 110 and part D. Section 107(d)(3)(E)(v). In this rulemaking, EPA is evaluating redesignation for only the West Virginia portion of the Area on the basis of whether West Virginia has met these applicable requirements.

II. Relationship between this rulemaking and the attainment plan rulemaking

Some of the criteria for this proposed redesignation are met by elements of the previously approved Ohio and West Virginia attainment plans. In particular, part of the evidence that the Area is attaining the SO₂ NAAQS is based on modeling included in the two states' attainment plans and related supplemental submittals. The SO₂ emission limits that assure the permanence

and Federal enforceability of the air quality improvement in the Area were also submitted as part of the attainment plans.

As noted previously, EPA proposed to approve the Ohio and West Virginia attainment plans on June 24, 2019, at 84 FR 29456, and issued a final approval on October 22, 2019. 84 FR 56385. This rulemaking is not reopening any portion of that rulemaking. For example, this rulemaking does not solicit any additional comments on the modeling in the two states' attainment plans, on the adequacy of the limits in those plans for assuring attainment, or generally on whether those plans warranted approval. Comments on these topics were germane to the attainment plans rulemaking and were solicited in that rulemaking. EPA addressed these topics in the attainment plans rulemaking but received no comments on these topics in that rulemaking. As stated previously, EPA's proposed approval of West Virginia's redesignation request is based in part on the final rulemaking approving the Ohio and West Virginia attainment plans.

III. Determination of attainment

The first requirement for redesignation is to demonstrate that the 2010 1-hour SO₂ NAAQS has been attained in the entire Steubenville Nonattainment Area. As stated in EPA's April 23, 2014 "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions" (referred to as "2014 SO₂ Guidance"), there are two components needed to support an attainment determination for SO₂: 1) a review of representative air quality monitoring data, and 2) a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable NAAQS based on current actual emissions or the fully implemented control strategy. 2014 SO₂ Guidance, p.62. West Virginia has addressed both components.

Under EPA regulations at 40 CFR 50.17, the 2010 1-hour SO₂ NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour

daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50, at all relevant monitoring sites in the subject area. EPA has reviewed the ambient air monitoring data for the Steubenville Nonattainment Area included in West Virginia's redesignation request, which consists of data from three SO₂ monitoring sites in Jefferson County, Ohio and three SO₂ monitoring sites in Brooke County, West Virginia. The data from these monitors have been certified and recorded in EPA's Air Quality System (AQS) database.

Table 1 shows the 99th percentile results and three-year average design values for the Steubenville Nonattainment Area monitors for 2016-2018, which are the most recent three years of complete, quality-assured data. The 2016-2018 design value¹ for the Steubenville Nonattainment Area is 37 ppb, which is well below the 2010 SO₂ NAAQS of 75 ppb. This design value, which was measured at the Weirton-Marland Heights monitor (Site ID 54-009-0011), in Brooke County, West Virginia, is the highest monitored design value in the Steubenville Nonattainment Area. Therefore, West Virginia has demonstrated that the Steubenville Nonattainment Area's SO₂ monitors currently show attainment of the 2010 SO₂ NAAQS. For every 3-year period starting with the 2013-2015 design value period, all six monitors have had design values below the 2010 SO₂ NAAQS of 75 ppb. Preliminary monitoring data for 2019 indicate that the Area is continuing to attain the 2010 SO₂ NAAQS.

Table 1. Monitoring data for the Steubenville Nonattainment Area for 2016-2018.

Site ID	Location	Year and 99 th percentile value (ppb)			Design Value: Average 2016-2018 (ppb)
		2016	2017	2018	
39-081-0017	Jefferson County, OH	27	18	34	26

¹ The "design value" is the 3-year average of the annual 99th percentile daily maximum 1-hour values for a monitoring site. 40 CFR part 50, Appendix T.

39-081-0018	Jefferson County, OH	31	34	9	25
39-081-0020	Jefferson County, OH	20	13	8	14
54-009-0005	Brooke County, WV	33	28	48	36
54-009-0007	Brooke County, WV	39	23	24	29
54-009-0011	Brooke County, WV	49	27	35	37

In addition to the monitoring data, West Virginia submitted a modeling analysis demonstrating that the control strategy for the Steubenville Nonattainment Area will provide for attainment of the SO₂ NAAQS in the entire Area. West Virginia's August 22, 2019 redesignation request includes dispersion modeling from the attainment plan for the Steubenville Nonattainment Area that was approved by EPA on October 22, 2019.² This joint modeling analysis demonstrated that the Steubenville Nonattainment Area had attained the 2010 SO₂ NAAQS based on the allowable emissions from the four primary sources in the Area: 1) the Cardinal Power Plant, located in Brilliant, Ohio; 2) JSW Steel (formerly Wheeling Pittsburgh Steel Plant and referred to by West Virginia as "Mingo Junction Steel Works") in Mingo Junction, Ohio; 3) the Mingo Junction Energy Center also in Mingo Junction, Ohio; and 4) MSC in Follansbee, West Virginia. The modeling analysis is discussed in detail in the June 24, 2019 (84 FR 29456) notice of proposed rulemaking for West Virginia's attainment plan.

West Virginia has confirmed that the modeled facilities are currently in full compliance with their emission limits. Current actual emissions at these facilities are therefore at or below the

² On March 25, 2019, OEPA submitted revised modeling with a new limit and revised stack characteristics for Cardinal Power Plant as a supplement to the attainment plan for the Steubenville Nonattainment Area. West Virginia concurred with the revised modeling on May 1, 2019. The March 25, 2019 supplement was approved with the attainment plan for the Steubenville Nonattainment Area on October 22, 2019. West Virginia's August 22, 2019 redesignation request includes the approved dispersion modeling submitted by OEPA as a supplement to the attainment plan on March 25, 2019.

allowable levels used in the modeling analysis included with West Virginia's redesignation request. Because this modeling shows that compliance with the emission limits in the States' plans yields attainment in the entire nonattainment area, and the sources are complying with these limits, this modeling also supports EPA's proposed conclusion that both the Ohio portion and West Virginia portion of the two-state Area are attaining the 2010 SO₂ NAAQS.

IV. CAA section 110 and part D requirements and fully approved SIP under CAA section 110(k)

In accordance with section 107(d)(3)(E)(v) of the CAA, in order to redesignate the Steubenville Area to attainment, West Virginia must meet all requirements applicable to the Steubenville Nonattainment Area under CAA section 110 (general SIP requirements) and part D of title I of the CAA (SIP requirements for nonattainment areas). In addition, in accordance with section 107(d)(3)(E)(ii) of the CAA, the West Virginia SIP for the Steubenville Nonattainment Area must be fully approved under CAA section 110(k).

The Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also* Shapiro memorandum ("State Implementation Plan (SIP) requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993) and 60 FR

12459, 12465-12466, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved but are not required as a prerequisite to redesignation. *See* CAA section 175A(c). *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

EPA has determined that, in accordance with section 107(d)(3)(E)(v), West Virginia has met all SIP requirements under section 110 of the CAA and part D of title I of the CAA applicable for purposes of this redesignation. In making these determinations, EPA ascertained what requirements are applicable to the Area and determined that the portions of the West Virginia SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements. EPA's rationale is discussed in more detail in the following sections.

1. West Virginia Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Steubenville Nonattainment Area for Purposes of Redesignation

a. Section 110 General Requirements for SIPs

Pursuant to CAA section 110(a)(1), whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan (*i.e.* "SIP") for the implementation, maintenance and enforcement of such NAAQS. Section 110(a)(2) of title I of the CAA contains the general requirements for a SIP, also known as "infrastructure" requirements. The infrastructure requirements of section 110(a)(2) include the requirements in subsections 110(a)(2)(A) through (M).

However, not every requirement of section 110(a)(2) is an applicable requirement for the

purposes of redesignating the Steubenville Nonattainment Area to attainment for the SO₂ NAAQS. For example, section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. When such issues have been identified, EPA has required certain states to establish programs to address transport of air pollutants. *See* Nitrogen Oxides (NO_x) SIP Call and amendments to the NO_x SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and the Cross-State Air Pollution Rule (CSAPR) Update (81 FR 74504, October 26, 2016). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's SO₂ designation. That is, any applicable section 110(a)(2)(D) requirement continues to apply to a state regardless of the attainment designation (or redesignation) of an area. EPA has concluded that the SIP requirements linked to an area's SO₂ designation are the relevant (applicable) measures when reviewing a redesignation request for an area, and therefore the general requirements of section 110(a)(2)(D) are not applicable requirements for the purposes of a SO₂ redesignation. Similarly, other section 110(a)(2) elements that are neither connected with attainment plan submissions nor linked with an area's SO₂ designation are not applicable requirements for purposes of redesignation. An area redesignated from SO₂ nonattainment to attainment will remain subject to these statewide requirements after redesignation to attainment. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with CAA section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation

(65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Nonetheless, EPA has reviewed West Virginia's SIP and concludes that it meets the general SIP requirements of section 110 of the CAA, for those requirements that are applicable for purposes of an SO₂ redesignation. EPA approved elements of West Virginia's July 1, 2013, and June 1, 2015, SO₂ infrastructure SIP submittals on November 17, 2014 (79 FR 62022) and August 11, 2016 (81 FR 53008), respectively.³ As explained previously, the general requirements of CAA section 110(a)(2) are statewide requirements that are not linked to the nonattainment status of the Steubenville Nonattainment Area and are therefore not "applicable requirements" for the purpose of reviewing West Virginia's redesignation request. Because West Virginia satisfies the general SIP elements and requirements set forth in CAA section 110(a)(2) applicable to and necessary for redesignation, EPA concludes that West Virginia has satisfied the criterion of section 107(d)(3)(E)(v) regarding section 110 of the CAA.

b. Part D Requirements

In addition to the CAA section 110 requirements, section 107(d)(3)(E)(v) requires that the state meet all the requirements applicable to the nonattainment area "under part D of this subchapter" in order for the nonattainment area to be redesignated. Both section 107 and part D are within subchapter 1 of the CAA. Part D, entitled "Plan Requirements for Nonattainment Areas," consists of six subparts, of which only subparts 1 and 5 are applicable to SO₂ nonattainment areas. Subpart 1 (sections 171–179B) contains provisions that can apply to all nonattainment areas for all criteria pollutants, while subpart 5 (sections 191-192) contains additional provisions

³ West Virginia's SO₂ infrastructure SIP submittals did not address the interstate transport element of CAA section 110(a)(2)(D)(i). As explained previously, the interstate transport element of CAA section 110(a)(2)(D)(i) is not an applicable requirement for redesignation of the Steubenville Nonattainment Area.

for SO₂, NO_x, or lead nonattainment areas. The requirements applicable to this redesignation are discussed below.

i. Subpart 1 Requirements

1. Section 172 Requirements

CAA section 172 requires states with nonattainment areas to submit plans that provide for timely attainment of the NAAQS. CAA section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements is found in the General Preamble for Implementation of Title I. 57 FR 13498, April 16, 1992.

As noted earlier, West Virginia submitted, and EPA approved, West Virginia's attainment plan for the Steubenville Nonattainment Area. 84 FR 29456, June 24, 2019; 84 FR 56385, October 22, 2019. In the proposed approval, EPA evaluated and proposed approval of the following elements of West Virginia's attainment plan: Emissions inventory (section 172(c)(3)), a determination that the control strategy for the primary SO₂ source within the Steubenville Nonattainment Area constitutes reasonably available control measures/reasonably available control technology (RACM/RACT) and an attainment demonstration (section 172(c)(1)), enforceable emissions limitations and control measures (172(c)(4)), new source review (NSR) (section 172(c)(5)),⁴ reasonable further progress (RFP) (section 172(c)(2)), contingency measures (section 172(c)(9)), and compliance with the requirements of CAA section 110(a)(2) (section 172(c)(7)). EPA's proposed approval also found that West Virginia did not need to

⁴ EPA has a longstanding interpretation that because nonattainment new source review (NNSR) is replaced by prevention of significant deterioration (PSD) upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Nevertheless, West Virginia has a SIP-approved NSR and PSD program, found at 45CSR13, 45CSR19, and 45CSR14. See 40 CFR 52.2520(c). West Virginia's PSD program will become effective in the Steubenville Nonattainment Area upon redesignation to attainment.

adopt other measures than those adopted within the attainment plan to achieve compliance with the 2010 1-hour SO₂ NAAQS, as potentially required by section 172(c)(6). Thus, EPA found in the final approval of the attainment plan that West Virginia had complied with all the applicable requirements of section 172 of the CAA, and this proposed approval of West Virginia's redesignation request relies upon that finding within EPA's final approval of West Virginia's attainment plan.

Because EPA's analysis of these elements of CAA section 172 were available for public comment in the proposed attainment plan approval, EPA is not seeking any further public comment in this action on the section 172 elements approved in the attainment plan approval. Comments on these elements were germane to the attainment plan approval and should have been submitted during the public comment period for the proposed attainment plan approval.

2. Section 173

Section 173 of the CAA includes requirements for permit programs that are required in a nonattainment area for new sources by section 172(c)(5). This is known as NNSR. As stated previously, West Virginia has an NSR permitting program, found at 45CSR13 and 45CSR19. EPA therefore proposes to conclude that West Virginia has an NSR permitting program meeting the requirements of section 173 for SO₂. In addition, West Virginia has a SIP-approved PSD program under 45CSR14. *See* 40 CFR 52.2520(c).

3. Section 175A

CAA section 175A requires that states seeking redesignation of an area to attainment submit a "maintenance plan" containing certain elements. West Virginia included a maintenance plan for the Steubenville Nonattainment Area with their August 22, 2019 redesignation request, which is discussed in detail in Section VI of this notice of proposed rulemaking.

4. Section 176 Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On April 12, 2007, West Virginia submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on May 2, 2008 (73 FR 24175).

However, EPA interprets the conformity SIP requirements as not applicable for purposes of evaluating a redesignation request because, like other requirements listed above, state conformity rules are still required after redesignation to attainment and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Furthermore, due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, EPA's transportation conformity rules do not apply to SO₂ unless the EPA Regional Administrator or the director of the state air agency has found that transportation-related emissions of SO₂ as a precursor are a significant contributor to a SO₂ or fine particulate matter (PM_{2.5}) nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment, or maintenance strategy. *See* 40 CFR

93.102(b)(1), (2)(v); SO₂ Nonattainment Area Guidance. Neither of these conditions have been met; therefore, EPA's transportation conformity rules do not apply to SO₂ for the Steubenville Nonattainment Area.

5. Sections 176A, 177, 178, 179 and 179B

CAA sections 176A through 179B are not applicable requirements for the purpose of redesignation for SO₂.

ii. Subpart 5 Requirements

The subpart 5 requirements, which consist of sections 191 and 192 of the CAA, are specific provisions applicable to SO₂, NO_x or lead nonattainment areas. Section 191 of the CAA requires states with areas designated nonattainment for SO₂, NO_x or lead after November 15, 1990, to submit within 18 months of the designation an implementation plan meeting the requirements of part D. West Virginia's part D SIP (attainment plan) for its portion of the Steubenville Nonattainment Area was due April 4, 2015. As stated previously, West Virginia submitted its part D SIP (attainment plan) on April 25, 2016, with a supplemental submission on November 27, 2017 and a clarification letter on May 1, 2019. In its proposed and final rulemakings on West Virginia's part D SIP (attainment plan), EPA found that West Virginia satisfied the applicable requirements under CAA section 110 and part D for the Steubenville Nonattainment Area. *See* 84 FR 29456 (June 24, 2019) and 84 FR 56385 (October 22, 2019). West Virginia has therefore satisfied this subpart 5, section 191 requirement for redesignation.

Section 192 sets forth attainment dates for nonattainment areas under section 191. For SO₂, section 192(a) requires that attainment plans provide for attainment of the primary standard as expeditiously as possible, but no later than five years from the date of the nonattainment designation. EPA designated the Steubenville Area as nonattainment on August 5, 2013, with an

attainment date of October 4, 2018. As discussed in Section III, the Steubenville Nonattainment Area has demonstrated attainment with the 2010 SO₂ standard since the 2013-2015 monitoring period and continues to attain the SO₂ NAAQS. Therefore, EPA is proposing to find that the subpart 5, section 192 requirement has been met.

Based on the above, EPA is proposing to find that West Virginia has satisfied the applicable requirements for the redesignation of its portion of the Steubenville Nonattainment Area under section 110 and part D of title I of the CAA.

V. Permanent and enforceable emission reductions

For an area to be redesignated, the state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. As stated previously, the primary sources in the Steubenville Nonattainment Area are the Cardinal Power Plant, located in Brilliant, Ohio; JSW Steel, formerly Wheeling Pittsburgh Steel Plant and referred to by West Virginia as “Mingo Junction Steel Works”, in Mingo Junction, Ohio; the Mingo Junction Energy Center (also known as “R.G. Steel-Wheeling Mingo Junction”), also in Mingo Junction, Ohio; and MSC, in Follansbee, West Virginia.

These facilities have all significantly reduced SO₂ emissions since the area was monitoring violations, and these emission reductions have been made permanent and enforceable by the limits that Ohio and West Virginia adopted and submitted in their respective attainment plan submittals.

MSC produces metallurgical-grade coke and coke gas byproducts from coal, which contains sulfur. A byproduct of coke production is coke oven gas, which contains SO₂. The facility burns this gas, releasing SO₂ emissions. As a result of a consent order dated September 29, 2017 (Consent Order Number CO-SIP-C-2017-9), MSC has improved its coke oven gas

desulfurization equipment to reduce its SO₂ emissions. The emissions reductions, mandated by West Virginia's emission limits and work practice requirements contained in the consent order, were approved into the West Virginia SIP through the attainment plan approval and are therefore permanent and Federally enforceable. 84 FR 56385 (October 22, 2019); 40 CFR 52.2520(d).

The Cardinal Power Plant is subject to several permanent and enforceable control measures including, but not limited to, the Acid Rain Program and the Mercury and Air Toxics Standard (MATS) rule. In addition, restrictions on SO₂ emissions at the Cardinal Power Plant are approved into the Ohio SIP under Chapter 3745-18 and include a Federally-enforceable, 30-day rolling average combined SO₂ limit of 4,858.75 pound per hour (lb/hr) for the coal-fired boiler Units 1, 2, and 3. *See* 40 CFR 52.1870(c). The Cardinal Power Plant implemented flue gas desulfurization (FGD) between 2010 and 2012, resulting in a reduction of SO₂ emissions from 32,500 tons in 2010 to 9,700 tons in 2018, a reduction that Ohio's limit requires to be maintained. 84 FR 4942 (September 20, 2019). Therefore, EPA is proposing to find that the Cardinal Power Plant is subject to permanent and enforceable control measures.

Both the Mingo Junction Energy Center and Mingo Junction Steel Works (JSW Steel) have ceased operations, with JSW Steel resuming limited operations in 2018. Both Mingo Junction Energy Center and JSW Steel are subject to permanent and enforceable control measures identified in the SIP-approved attainment plan that were found to provide for attainment and maintenance of the 2010 1-hour SO₂ NAAQS in the Steubenville Nonattainment Area. These measures under Ohio rules OAC 3745-18 are approved into the Ohio SIP. In the event that these facilities resume full operations, they would remain subject to the Federally enforceable control measures in the Ohio SIP that were shown to provide for attainment and maintenance of the SO₂ NAAQS in the SIP-approved attainment plan for the Steubenville Nonattainment Area. 84 FR

29456 (June 24, 2019); 84 FR 56385 (October 22, 2019).

At the time of Steubenville's nonattainment designation, the monitored SO₂ design values (2009-2011) in the area were 109 ppb at the Jefferson County monitor (Site ID 39-081-0017) and 174 ppb at the Brooke County, West Virginia monitor (Site ID 54-009-0011). More recent monitoring data indicate that ambient SO₂ levels have improved significantly. The highest monitored design value for the Steubenville Nonattainment Area for 2016-2018 is 37 ppb. This value was measured at monitor 54-009-0011 in Brooke County, West Virginia. These monitored values are well below the SO₂ NAAQS of 75 ppb. This air quality improvement is attributable to the substantial emission reductions noted above, which the Ohio and West Virginia attainment plans require to be permanent and enforceable. Thus, EPA proposes to find that the improvement in air quality in the Steubenville Nonattainment Area can be attributed to permanent and enforceable emission reductions at facilities in Ohio and West Virginia, and that CAA section 107(d)(3)(E)(iii) has been satisfied by both Ohio and West Virginia.

VI. Maintenance plan

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Section 175A requires that the maintenance plan demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for an additional ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must also contain

contingency measures as EPA deems necessary to assure prompt correction of any future one-hour violations. Specifically, the maintenance plan should address five requirements: 1) an attainment emissions inventory; 2) maintenance demonstration; 3) commitment for continued air quality monitoring; 4) verification of continued attainment; and 5) a contingency plan. *See* Calcagni memorandum.

In conjunction with their request to redesignate the West Virginia portion of the Steubenville Nonattainment Area, West Virginia submitted, as a revision to their SIP, a plan to provide for maintenance of the SO₂ NAAQS through 2030 in the Area, which is 10 years after the expected effective date of the redesignation to attainment. West Virginia has committed to review the maintenance plan for the Area eight years after redesignation. EPA is proposing to find that West Virginia's maintenance plan for the Steubenville Nonattainment Area includes the necessary components per the CAA, including CAA section 175A and EPA guidance, and is proposing to approve the maintenance plan as a revision to the West Virginia SIP.

1. Attainment inventory

The Calcagni memorandum indicates that states requesting redesignation to attainment should develop an attainment emissions inventory in order to identify the level of emissions in the area which is sufficient to attain the NAAQS. The attainment inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with monitoring data showing attainment.

For the attainment inventory, West Virginia used the year 2011 as the "nonattainment year" since the three-year period 2009-2011 was the basis of the nonattainment designation. Although the attainment date for the Steubenville Nonattainment Area was October 4, 2018, West Virginia

selected 2016 as the “attainment year” for its emission inventory because 2016 was one of the years contributing to the 2014-2016 and 2015-2017 design values demonstrating attainment of the SO₂ NAAQS in the Steubenville Nonattainment Area. The attainment year inventory is shown in Table 2 as well as the projected emissions of SO₂ in future years (i.e. 2023 and 2030).

2. *Maintenance demonstration*

Pursuant to the 2014 SO₂ guidance, an air agency may demonstrate maintenance of the NAAQS by either showing that future emissions of SO₂ will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. As discussed previously, West Virginia and Ohio have submitted, and EPA has approved, modeling analyses demonstrating attainment and maintenance of the SO₂ NAAQS as part of the attainment plans for the Steubenville Nonattainment Area.

In addition, West Virginia has demonstrated maintenance of the SO₂ NAAQS through 2030 with emission inventories showing that future emissions of SO₂ in the Steubenville Nonattainment Area will remain at or below attainment year emission levels. West Virginia projected SO₂ emissions for an interim future year of 2023 and for 2030. The attainment and maintenance inventories, provided in Table 2, shows the projected emissions of SO₂ in 2011 (nonattainment year), 2016 (attainment year), 2023 (interim year), and 2030 and demonstrates that future emissions of SO₂ will not exceed the levels of the 2016 attainment year inventory for the Steubenville Nonattainment Area for a minimum of 10 years following redesignation.

Table 2. Brooke County, West Virginia Emission Inventory Totals for 2011, 2016, 2023, and 2030 (tpy).

Location	Sector	2011	2016 (WV) and 2014 (OH) (Attainment)	2023	2030
West Virginia	EGU	0	0	0	0
	Non-EGU	730	383	382	381

Portion	Oil & Gas	1.56	6.35	7.69	8.11
	Area	143.46	138.34	135.31	134.32
	Non-Road	0.02	0.01	0.01	0.01
	On-Road	2.07	2.02	0.79	0.74
	Total	877.11	529.72	525.80	524.18
Ohio Portion¹	EGU	25,122.42	10,660.65	9,602.02	9,602.02
	Non-EGU	223.44	0.02	0.02	0.02
	Non-Road	0.29	0.23	0.14	0.15
	Other (Area)	62.13	57.76	56.67	56.35
	On-Road	3.52	3.46	1.38	1.32
	Total	25,411.80	10,722.12	9,660.23	9,659.86
Combined (WV & OH) Total		26,288.91	11,251.84	10,186.03	10,184.04

EPA is proposing to find that the maintenance inventory provided in Table 2 shows maintenance of the SO₂ NAAQS in the Steubenville Nonattainment Area by providing emissions information to support the demonstration that future emissions of SO₂ will remain below the 2016 emission levels (an inventory year showing attainment of the SO₂ NAAQS).

According to West Virginia's submittal, the demonstration that improvement in air quality occurred between the nonattainment and attainment years is based on permanent and enforceable emission reductions. The permanent and enforceable SO₂ emission reductions described in Section V of this notice, which includes the SIP-approved consent order CO-SIP-C-2017-9 for MSC, ensure that SO₂ emissions in the West Virginia portion of the Steubenville Nonattainment Area will not exceed the maintenance level emissions shown in Table 2. This is an acceptable method for demonstrating maintenance. *See* 2014 SO₂ Guidance, p. 67. West Virginia's maintenance plan notes that West Virginia and Ohio have comprehensive programs to identify sources of violations of the SO₂ NAAQS as well as EPA-approved compliance and enforcement programs to address violations. Therefore, EPA proposes to find that West Virginia's demonstration of maintenance of the SO₂ NAAQS in the Steubenville Nonattainment Area is

based on permanent and enforceable control measures.

3. Commitment for continued air quality monitoring

In their submittal, West Virginia commits to continue monitoring SO₂ levels at the SO₂ monitoring sites in West Virginia identified in Table 1 of this notice. West Virginia also commits to consulting with EPA Region III prior to making any changes to the existing monitoring network and continuing to quality assure the monitoring data to meet the requirements of 40 CFR part 58 and all other Federal requirements. West Virginia also notes that Consent Order Number CO-SIP-C-2017-9 for MSC and permit for the Cardinal Power Plant establish monitoring, testing, recordkeeping, and reporting requirements to assure compliance with SO₂ emission limits which have been demonstrated to not cause a violation of the SO₂ NAAQS. Therefore, EPA proposes to find that West Virginia's maintenance plan includes a commitment for continued air quality monitoring.

4. Verification of continued attainment

In their submittal, West Virginia commits to maintaining the aforementioned control measures after redesignation of the Steubenville Nonattainment Area and that any changes to their rules or emission limits applicable to maintenance of the 2010 1-hour SO₂ standard in the West Virginia portion of the Steubenville Nonattainment Area will be submitted to EPA for approval as a SIP revision. West Virginia states that they have the legal authority and necessary resources to actively enforce any violations of their rules or permit provisions and that they intend to continue the enforcement of all rules related to SO₂ emissions in the West Virginia portion of the Steubenville Nonattainment Area.

In addition, West Virginia commits to continue to provide updates to future emissions inventories in accordance with EPA's Air Emissions Reporting Requirements (AERR) rule and

to continue to submit emission inventories every three years. EPA is proposing to find that West Virginia's maintenance plan provides for the verification of continued attainment in the Steubenville Nonattainment Area.

5. Contingency plan

Section 175A(d) of the CAA requires that maintenance plans include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after a redesignation of the area to attainment. Pursuant to EPA's 2014 SO₂ Guidance, p. 69, in the case that attainment revolves around compliance of a single source or a small set of sources with emission limits shown to provide for attainment, EPA interprets "contingency measures" to mean that the state agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement. The Steubenville Nonattainment Area is an area where attainment is dependent on the compliance of a small set of sources with emission limits shown to provide for attainment, specifically MSC in West Virginia and the Cardinal Power Plant in Ohio. In their submittal, West Virginia verifies that both West Virginia and Ohio have comprehensive enforcement programs to identify sources of violations of the SO₂ NAAQS and EPA-approved compliance and enforcement programs to undertake aggressive follow-up for any violations. Therefore, EPA proposes to find that West Virginia's maintenance plan satisfies the contingency measures requirement of CAA 175A(d).

West Virginia's contingency measures identify triggers and corresponding responses. In the event that the 99th percentile of the 1-hour daily SO₂ maximum concentration of 75 ppb occurs in a single calendar year within the Steubenville Nonattainment Area, a "warning level response" will be triggered. The warning level response will consist of a study to determine whether SO₂

values indicate a trend toward higher SO₂ values or whether emissions appear to be increasing, as well as the control measures necessary to reverse the trend, if needed. The implementation of necessary controls in response to a warning level response trigger will occur as expeditiously as possible, but no later than 12 months from the conclusion of the most recent calendar year. In the event that a 2-year average of the 99th percentile 1-hour SO₂ concentration of 75 ppb or greater or the violation of the SO₂ NAAQS occurs within the Steubenville Nonattainment Area, an “action level response” will be triggered. If the exceedance is found to not be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, West Virginia Division of Air Quality (DAQ), in conjunction with the metropolitan planning organization (MPO) or regional council of governments, will determine additional control measures needed to assure continued attainment of the 2010 SO₂ NAAQS. Selected measures will be those that can be implemented within 18 months from the close of the calendar year that prompted the action level response.

Based on the above, EPA proposes to find that West Virginia’s maintenance plan adequately addresses the five requirements in section 175A that are necessary to maintain the 2010 1-hour SO₂ NAAQS in the Steubenville Nonattainment Area.

VII. Proposed Action

In accordance with West Virginia’s August 22, 2019 request, EPA is proposing to redesignate the West Virginia portion of the Steubenville Nonattainment Area from nonattainment to attainment of the 2010 SO₂ NAAQS. The West Virginia portion of the nonattainment area includes Cross Creek Tax District in Brooke County. West Virginia has demonstrated that the Area is attaining the SO₂ NAAQS and that the improvement in air quality is due to permanent and enforceable SO₂ emission reductions in the Area. EPA is also proposing to approve, as a

revision to the West Virginia SIP, West Virginia's maintenance plan. EPA is proposing to find that the maintenance plan demonstrates maintenance of the SO₂ NAAQS through 2030 in the Steubenville Nonattainment Area and satisfies the requirements of CAA section 175A.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule proposing approval of the redesignation of the Steubenville Nonattainment Area and associated maintenance plan does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 10, 2020.

Cosmo Servidio,
Regional Administrator,
Region III.

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